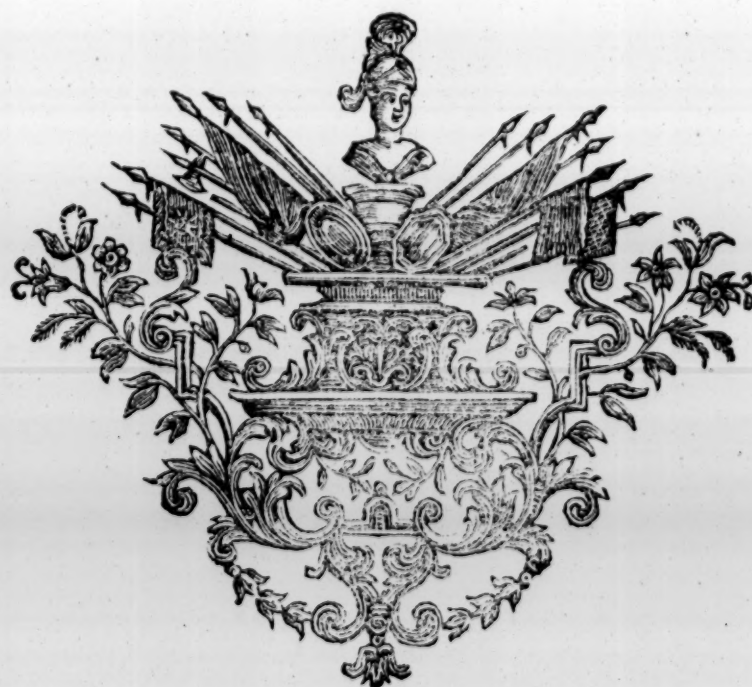


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Common-Council of *LONDON.*

George A. Stearns Secy



Printed for *Edward Symon* in Cornhill. 1724.

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Martis 17^o die Martii 1723, Annoque
Regis Georgii Magnæ Britanniae, &c.
decimo.

THIS Day the Committee appointed the 20th of *February* last to consider in what manner the Opinions of Council and the Act of Common Council which were read in this Court, relating to the Negative Voice of the Lord Mayor and Aldermen in Matters propounded, and in making of Laws and Orders, and admitting of Officers in Common Council, should be Printed, delivered into this Court their Report in Writing under their Hands, in these Words.

To the Right Honourable the Lord Mayor and Court of Aldermen.

WE whose Names are hereunto subscribed, being your Committee appointed, by Order of this Honourable Court, bearing Date the 20th Day of *February* last, to consider in what manner the Opinions of Council, and the Act of Common Council, which were read in this Court, relating to the Negative Voice of the Lord Mayor and Aldermen, in Matters propounded, and in making of Laws and Orders, and admitting of Officers in Common Council, should be printed, have met in Obedience thereto; and having seen an Authentick Transcript from the Records in the Tower, of a Charter of *Edward III*, we thought it necessary to lay that before you in the first place, and to inform your Lordship and this Court, That in the 15th Year of that King this Charter passed in Parliament, in like manner as the Great Charter of the Liberties of *England*; when the King, by Consent of His Parliament, willing to do the Citizens a Pleasure, did, (amongst other Favours bestowed upon them by this Charter) for Himself and His Heirs, "Grant and confirm to the Mayor and Aldermen of this City, That if any of the Customs of the said City, thitherto obtained and used, were in any Part difficult or defective, or any thing in the same City newly happening, where before there was no Remedy, should need Amendment, The said Mayor and Aldermen, and their Successors, with the Assent of the Commonalty of the said City, might (as often as they thought expedient) apply and ordain a fit Remedy, agreeable to good Faith and Reason, for the common Profit of the Citizens and City, and other Persons having Recourse thither."

Rot. Chart. de
Ao. 15^o E. 3.
No. 12.

Upon this Occasion we might observe, That this Charter confirms the Constitution and Government of this City, (as then it was) and in express Terms, points out the Method of acting for the Time to come; as also, That it lays the City under the strongest Obligation to pursue that Method, not only as it became a Law of the Land, by being passed in Parliament, but that in the Body of it many valuable Privileges are granted to this City, which to this Day the Citizens enjoy.

However, since we are confined to the Particulars contained in the Order of this Honourable Court, we shall not enlarge on these Considerations; but only beg Leave to remark, That the Negative Voice of the Lord Mayor and Aldermen, in making of By-Laws in Common Council, was never (that we can find) called in Question, or objected to, until the Time of the unhappy Troubles in the Year 1644.

And in the Month of *January* in that Year, the Commons in Common Council disputed this Right.

Jor. Atkin No.
40. f. 121. b.

After which, in the Year 1648, a Bill relating thereto was brought into the House of Commons, and on the 28th of *February* passed into an Act, whereby it was (amongst other things) ordained and enacted by the Commons in Parliament, "That in all Times to come, all things proposed in Common Council should be fairly debated, put to the Question, voted, and determined, in and by the same Common Council, as the major Part

“ of the Members present in the said Common Council should desire or
 “ think fit ; and in every Vote which should pass, and in the other Pro-
 “ ceedings in the said Common Council, neither the Lord Mayor, nor Al-
 “ dermen, (joint or separate) should have any negative or distinct Voice, or
 “ Vote, otherwise than as with and amongst, and as Part of the rest of the
 “ Members of the said Common Council, and in the same manner as the
 “ other Members had. And that the Absence, or Withdrawing of the
 “ Lord Mayor, or Aldermen, from the said Council, should not stop or
 “ prejudice the Proceedings of the said Council ; but that every Common
 “ Council of the City of *London*, should sit and continue so long as the
 “ major Part of the Council should think fit ; and should not be dissolved
 “ or adjourned, but by and according to the Order or Consent of the ma-
 “ jor Part of the same Council.

By this Act of the *Commons* in Parliament, the Lord-Mayor and Aldermen were *first* deprived of their Right to a Negative, and the taking it away in the Terms of that Act, is a very strong Proof, that they had exercised and enjoyed it to that Time ; or else the making such an Act had been vain and unnecessary.

Jor. Hooker, No. 48. f. 90. The next remarkable Occurrence was in the Year 1674. when the Commons thinking it a Hardship on the City, that the Aldermen lived out of Town, would have passed a Law, with severe Penalties, upon such of the Aldermen as should continue their Residence out of the City.

Rep. Vyner, No. 80. f. 16. This the Aldermen resented, and dissented to the same.

Jor. Hooker, No. 48. f. 122. a. And on the 13th of *November*, 1674, the Recorder declared their Dissent in Common Council, which the Commons protested against, and appointed a Committee to see what their Power was ; yet Nothing was done therein by *them*, as your Committee can learn.

Rep. Davis, No. 82. f. 28. a. But on the 5th of *December*, 1676, we find entred in the Repertory of the Court of Lord-Mayor and Aldermen, by Order of that Court, the Opinions of Sir *William Jones*, Sir *Francis Pemberton*, Sir *John Maynard*, Sir *Francis Winnington*, and Mr. *Steele*, touching a Negative Voice claimed by the Lord-Mayor and Aldermen in Common-Council ; who all of them, (except Mr. *Steele*) gave their Opinions, That the Lord-Mayor and Aldermen had a Negative Voice in making of Laws and Ordinances in Common-Council.

Rep. Chaplin, No. 83. f. 117. b. And on the 21st of *February*, 1677, we find also entred in the Repertory of the said Court, the Opinions of Sir *William Dolben*, (the then Recorder) and Sir *George Jeffereys*, (the then Common Serjeant) upon the same Question ; and they concurred with the rest of the Lawyers, in Opposition to Mr. *Steele*.

And as to Mr. *Steele*, surely no fair and impartial Inquirer can believe, or would represent him to have been unbiassed, and to have given his Opinion upon this Point without Prejudice, when it is well known, that (from the Confidence they reposed in him) he was by the Commissioners for the Tryal of the King, chosen to be Attorney-General, and (with others) to draw up and manage the Charge against Him : And that he was also chosen Recorder of this City, by Virtue of an Ordinance of the House of Commons *only*, some short Time after that this Right of the Mayor and Aldermen had been illegally abolished by an Ordinance of the same House, most probably by his Advice.

Whitlock's Memorials, p. 362.
 Jor. Andrewes No. 41. f. 1. b.

And that Nothing of the Force of what is said by any of those Great Men might be lost, and to avoid all possible Misinterpretation, or Misrecital of their Words, we have transcribed the Opinions on both Sides, and subjoined them to this our Report.

And here permit us to add, That though these Great Lawyers reason excellently well upon the Charter granted by *Edward* the Third, as supposing it to be a Charter solely granted by the King's Prerogative, their Reasonings would have taken yet a stronger Turn, if it had been observed by them, that this Charter was granted in Parliament.

We beg Leave, in the last Place, to observe, what was the Opinion of the Commons themselves after this Transaction, and in what Manner they recognized this Right of the Lord-Mayor and Aldermen.

In the Year 1683, a Committee of Common-Council was appointed to inspect the Acts, and other Proceedings entered in their Journals in the Times of Usurpation, or at any Time before or since, that might be fit to be explained or repealed.

And

And the said Committee did on the Sixth of *June*, in the same Year, *Jor. Pritchard,*
make a Report, beginning with the following Preamble, (*viz.*) *No. 50. f. 32.*

"Whereas by a late Order of this Honourable Court, it was referred unto us, whose Names are subscribed, to inspect the Acts and other Proceedings entered in the Journals of this Court, in the Times of Usurpation, or at any Time before or since, that may be thought fit to be explained or repealed. Now we do humbly certify, That in pursuance of the said Order, we have perused and examined the Journals of this Court in the Times of the late Rebellion; wherein we find, not only many Innovations and Irregularities brought into this Court, and the Government of this City, but also most pernicious and abominable Proceedings in abetting and carrying on those wicked and unnatural Divisions, then raised in the Kingdom, and serving the Usurpation of those Times. All or most of which (we perswade ourselves) could never have had Place in this Court, had not Violence been offered to the Government of this City, the Lord Mayor been arrested and imprisoned, divers Loyal Aldermen and Commoners, some imprisoned others displaced, and all Loyal Citizens, generally discountenanced and discouraged; and others of factious, unquiet, and turbulent Spirits, got themselves into the Common-Council, and made up the greater Number therein. All which Acts and Proceedings, might (as they well deserve) be obliterated and wholly expunged, that no Remembrance thereof should be transmitted to Posterity, to the Shame and Dishonour of this Court and City; but that other Matters are therewith intermixed, which, for the Substance of them, are (in our Opinions) Inoffensive, Useful, and fit to be continued. Several Committees have formerly been appointed to obliterate the said unjust Proceedings, and there are Lines crossed over divers of them, which we presume were made by the said Committees, but not being thereby obliterated, and still remaining in the Books as the Acts and Proceedings of this Court, and never having been particularly disclaimed and repealed by any Vote or Act of this Court, (that we have observed.) We think it very fitting that the same, and all other like disloyal and irregular Proceedings, should by an Express Act of this Court, be renounced, repealed, and made absolutely null and void; which Proceedings, or most of them, we have here set down and Present to this Honourable Court for that Purpose; and desire that some few of them may be here openly read, to beget in this Court (as it hath done in us) a just Abhorrence and Detestation of such Proceedings.

"Of which kind are the Proceedings following.

Then follow many particular Acts and Orders proposed to be repealed, and among them,

"Orders and Resolutions touching the calling and manageing of *Ibid. f. 34. b.*
Common-Councils, 24 *January* 1644. And 24 *April* 1645, a Difference between the Mayor and Aldermen, and Commons, touching the Mayor and Aldermen's Right of a Negative Voice, proposed to be determined by the Parliament, and Order to suspend their Right in the mean Time.

"Reference touching a Petition to the Common Council, for a Common Hall, and a Declaration afterwards, That it is in the Power of the Common Council to assemble the Common Hall, 1 and 3 *June* 1648. *Ibid. f. 36. a.*

"Upon a Petition prepared to the Parliament for Justice against all Capital Actors, from the highest to the lowest, in the War against the Parliament, brought into Common Council; and on the Lord Mayor's Refusal to put it to the Question, and he, with the Aldermen and Officers, at last withdrawing, the Commons continued, and put a Commoner in the Chair, and then voted the said Petition, and ordered it to be presented, in the Name of the Commons in Common Council assembled, with a Narrative of that Day's Proceedings; and an Ordinance thereupon, shortly after made, by the House of Commons, touching the calling and holding of Common Councils, 13 *January* 1648. *Ibid.*

"William Steele chosen Recorder by Common Council, by virtue of an Act of the House of Commons, 3 *July* 1649. *Ibid. 36. b.*

"Narrative touching Common Councils called without Lord Mayor's Directions, and held after his Departure from it, by virtue of an Ordinance of Parliament, 14 and 17 *June* 1650. *Ibid. 37. a.*

Question

Ibid. " Question put after the Lord Mayor and Aldermen were gone out of the
" Common Council, 26 Sept. 1650.

Ibid. 37. b. " Order that the Lord Mayor and Aldermen withdraw out of the Com-
" mon Council, and the Commons turned into a Grand Committee, 3
" Dec. 1651.

Ibid. " Common Councils held without the Lord Mayor, or continued after
" his going out, 7 and 14 Dec. 1652. 14 and 15 June, and 24 Oct. 1653.

Ibid. f. 38. a. " Common Council held without the Lord Mayor, and Lord Titchbourne
" voted into the Chair, 21 Sept. 1659.

And then the said Report proceeds in these Words, (*viz.*)

Ibid. " All which Particulars aforesaid, being highly disloyal or favouring of
" the Faction and Usurpation of those unhappy Times, are fit, by Act of
" this Court, to be disclaimed, revoked, abrogated, and repealed, to all In-
" tents and Purposes whatsoever. Which, as it will demonstrate the Loyalty
" and good Affections of the present Members of this Court to His Majesty,
" and the established Government, and vindicate them from all Imputation
" of the like pernicious and destructive Principles and Practices, and will
" also express their Dislike of all Factionous Innovation in the Usages and
" Constitutions of this City, so will it prevent any ill Use that may be made
" in Time to come of the said irregular Actions.

" And we have also seen several Entries in the Journals of this Court,
" that the Lord Mayor and Aldermen, in Matters here propounded, have
" taken Time to advise and consider thereof, and to others, have declared
" their Dissent, and even, in the worst of Times; as for Instance, 14
" March 1641. upon two Petitions brought into Common Council by a
" Committee, to be presented to the Parliament, they were read, but not
" voted, because the Mayor's *Locum Tenens*, and the major part of the Alder-
" men, thought fit to advise of the same. And 24 January, 1644, It was
" declared by the Lord-Mayor and Aldermen, That they had a Negative
" Voice in Common-Council by *Antient Custom*, and Charters of this
" City. And we have also seen the Opinions of diverse learned Council,
" heretofore given to the Court of Aldermen, under their Hands, (*viz.*)
" The present Lord Chief Justice *Pemberton*, Sir *William Dolben*, Serjeant
" *Maynard*, Sir *William Jones*, Sir *George Jeffereys*, and Sir *Francis Winning-*
" *ton*; That the Lord-Mayor and Aldermen have a Negative Voice in ma-
" king Laws and Orders, and admitting of Officers, in Common-Council.
" We humbly propound, to take away all Disputes in this Matter for the
" Time to come, that the same may have the Approbation and Concur-
" rence of this Honourable Court.

Which Report, was the same Day, by Act of Common-Council agreed to, and confirmed in the Words following, *viz.*

Ibid. 38. b. " After Reading of which Report, here openly in this Court, the same
" was by this Court, in the several Particulars thereof, well approved of,
" agreed to, and confirmed; and it is Enacted, by the Lord-Mayor, Al-
" dermen, and Commons, in this Common-Council assembled, That all
" the several Acts, Orders, and Proceedings therein propounded, to be dis-
" claimed and repealed; be repealed and made void: And they, and
" every of them, are by Authority of this Court, disclaimed, repealed, and
" made null and void.

Having thus deduced, in this Report, what was necessary (in our Opini-
ons) to be published on this Occasion, and having made References in the
Margin, to the Authorities herein cited, whereby any Person, who will
take the Trouble to have Recourse to them, may receive compleat Satis-
faction of the Truth of the several Facts herein set forth; We humbly sub-
mit the same to the Judgment of this Honourable Court. Dated this 10th
Day of March, 1723.

John Eyles.
Edward Becher.
Harcourt Master.
Robert Baylis.

Which being here openly read, was very well liked and approved of by
this Court, and ordered to be entered into the Repertory. And it is further
ordered that the same be forthwith printed, and it is referred to the said
Committees to take Care of the Printing thereof, and to print as many Co-
pies as they shall think convenient.

Per Cur'

Miles Man.

The Opinions of Council mentioned in the foregoing Report, are as follows.

Davies

Davies Maior.

*Martis 5. Die Decembr' 1676. Annoque Regni Regis
Caroli Secundi Anglia, &c. xxviij.*

THIS Day were delivered into this Court, and here read, the Opinions of diverse Learned and Eminent Council under their Hands, namely, Of Sir William Jones the King's Attorney, Sir Francis Warrington the King's Solicitor, Sir John Maynard and Sir Francis Pemberton, Serjeants at Law; as also of Mr. William Steele, touching a negative Voice, claimed by this Court in Common-Council. Whereupon it is ordered, That the same be here entred, and the Originals thereof well and safely kept; and that the same, when enter'd accordingly, be compared with the said Originals, by Sir John Lawrence, and Sir William Turner, Knights and Aldermen. The Tenor whereof is as followeth. (That is to say,)

Quest. Whether the Mayor and Aldermen of the City of London have a Negative Voice in Matters propounded, and making of Laws and Orders, and admitting of Officers in Common Council?

Upon Consideration of this Case, we are of Opinion, That the Lord-Mayor and Aldermen have a Negative Voice, in making Laws and Orders, and admitting of Officers in Common-Council. Our Reasons are these; *First*, In making all Acts and Ordinances of Common-Council, (if they proceed from the Commons,) there is an Address from them to the Mayor and Aldermen before the Act be perfected and passed; (and this by constant Usage.) Which shews, that the Consent or Approbation of the Mayor and Aldermen is required, else such Address were idle. And if their Consent or Approbation be requisite, it's a necessary Consequent, that they have a Negative Voice. And this is further confirmed by the Form and Penning of the Acts themselves, which are sometimes (By the Mayor and Aldermen, with the Consent of the Commons;) sometimes (By the Mayor, Aldermen and Commons by their Common Consent;) sometimes (By the Mayor, Aldermen and Commonalty, &c.) And so in pleading them, they are said to be *per Majorem, & Aldermannos, ex assensu Communitatis, &c.* And the Custom laid to be so. *Secondly*, We find several Acts sent from the Mayor and Aldermen (by the Recorder) to the Commons in Council for their Consent; which shews, That sometimes Acts proceeded from the one first, and sometimes from the other: But always the Concurrence of Both is necessary. *Thirdly*, We find, That as the Commons, upon Acts sent to them from the Mayor and Aldermen (by the Recorder) have taken Time to consider before they have given their Assent: So, upon Acts sent from the Commons to the Mayor and Aldermen, (by the Common Serjeant,) the Mayor and Aldermen have taken Time to consider; and sometimes rejected the Act wholly, and sometimes rejected Part, and consented to the rest. *Fourthly*, If the Mayor and Aldermen had not a Negative Voice, in Matters propounded, and making of Laws and Orders, and admitting of Officers in Common Council, they would be quite excluded from any Power in making Laws and Orders, and admitting of Officers in Common Council. For, (as we are informed) the Usage hath never (except only in the late irregular Times) been for them to give their Votes *per Capita* in Common-Council: So every Common-Council Man would have a greater Power in making Laws and Orders, and admitting of Officers in Common-Council, than the chief Magistrate and Governors, which, (besides the Incongruity of the Thing in it self) seems strangely unreasonable, to exclude the chief Rulers and Members of a Corporation from a Power of the greatest Concern to a Corporation, and to give it to the Inferiors. And we are the more confirmed in our Opinion, That the Assent of the Mayor and Aldermen is necessary in such Cases, because of the pretended Act of Parliament in the Times of Usurpation, to take it from them; which is a strong Evidence of the Right before. *Fifthly*, From the Charter of the 15th of Ed. 3d, which grants, (*Quod iidem Major & Aldermanni, & successores sui de assensu Communitatis ejusdem Civitat'*) may make Ordinances, &c. By which it's plain, That the Concurrence of the Mayor and Aldermen is requisite to the making those Laws, &c. And if their Consent be necessary, it follows as necessarily, That they may dissent; which is the Thing in Question. If it be objected, That the Commons had before this Charter the sole Right of making

king Laws and Orders, and admitting of Officers in Common-Council; and therefore this Charter cannot alter it, especially not having Negative Words.

Respons. They that will object this, must make it plainly appear, that there was such a precedent Right, either by Charter or Usage; for otherwise, a Power for the Commons to make Laws, &c. without their Governors (which is the Power contended for) is not necessarily included in an Incorporation. Secondly, If it could be made appear, that there were such a Right before that Charter, yet if a Corporation accept a Charter, which alters or abridges their former Privileges, this will bind them, especially, if by long Usage after they submit to it. Thirdly, If there be no precedent Charter in exprefs Words, before the Charter of *Edw. 3.* which gives such a Right and Privilege to the Commons, the Usage since this Charter, is a stronger Evidence of what was the Right before, than any Instances of particular Cases before that Charter, can be to the contrary; especially, since common Presumption will favour the Governors Right in such Cases. So we think there will be little Reason for the Commons at this Day, to pretend any Right to such a Power from any thing precedent to that Charter.

WILLIAM JONES.
FR. PEMBERTON.

20 Dec. 75.

Maynard.

On Consideration of the whole Matter, I am of Opinion, That the Mayor and Aldermen have a Negative Voice in both making of Laws, and admitting to Offices whereto Admittance must be made by the Common-Council. And because I am desired to give my Reasons, they are these:

First, This being properly a Question of Fact, and the Right and Fact arising on ancient Usage; Enquiry is to be of the Ancient Usage; and that Usage is to be made good very clearly to my Understanding, from these Particulars.

First, The Stile and Form of the Acts when they are made, are always inclusive of the Mayor and Aldermen, never without them; (*viz.*) The Mayor, Aldermen and Council, by their common Consent; or, The Mayor and Aldermen, with the Consent of the Commonalty; or to the same Effect.

Secondly, As I understand, when the Commons in London do begin the Order, or Law, then they present the same by their common Serjeant, to the Mayor and Aldermen: And when the same beginneth with the Mayor and Aldermen, then they offer it by the Recorder, to the Consideration of the Common-Council. Which were a vain Formality, and needless, if so be the Mayor and Aldermen should be bound by the Commonalty, who are always a greater Number far than the Mayor and Aldermen. And when Time hath been taken by the Mayor and Aldermen, to advise upon what hath been offered; it shews, they cannot be concluded by the Commons in Common-Council.

Thirdly, The Charter of the 15. *Edw. 3.* I look upon, not as the Foundation of the Custom or Right of the Mayor and Aldermen in this Point; but it is a very strong and irrefragable Evidence, that the Custom was so before the granting of the Charter; and consequently, the Charter gave not, but confirmed that Point, for these Reasons:

First, The Charter could not erect such a Power, so extensive as is used to be put in Ure by divers Acts of Common-Council, but the same had been utterly unlawful and void.

Secondly, And consequently, (notwithstanding the Charter) every Person grieved by such Ordinance or Law, might have an Action against the Officer who executed them.

Thirdly, The putting such Orders and Laws in Execution, being the Act of the whole City, endangers the Forfeiture of the Franchises of the City: As the unadvised Act of the Mayor, in Time of *Edw. 1.* forfeited the Mayoralty till it was redeemed; and till Redemption, no Mayor, but a *Custos* governed, and he was made by the King, not chosen by the Commons.

Fourthly, It is utterly improbable, that the City would accept a Charter, to change their ancient Custom, in so great a Point especially; take a Grant of a void Power, instead of an ancient and good Custom, or Power founded on Custom: This Argument is made against the Objection or Supposition that the Custom formerly varied from the Charter. The City had always Advice of Learned in the Law, who could not but observe the ill Consequences above-mentioned, which would follow by the taking of such a Charter, contrary to their former Right and Custom.

Fourthly, It is apparently incongruous, if not absurd, that the Governed, or that those that are to be governed by the Laws, should not only have their Assent in making the Laws, (which is just) but wholly exclude the chief Governors. The Mayor, during his Time, is the Head of the Corporation, and resembles the Head in the Body Natural, where the Eyes are; the Aldermen seem to resemble the Breast, where the Heart lieth; the Commons in Common-Council, partake of, and resemble the Body. So the Laws, if the Mayor and Aldermen are excluded, should be made without Head and Heart, and the Body to direct both.

This Argument seems the stronger to me, because the Corporation, I mean the Commonalty, cannot do the least Matters in Point of Interest, they cannot make nor take any Grant without the Mayor. A Grant by, or to the City, when there is no Mayor, is regularly void.

Fifthly, It would be enquired into, and considered by those who are for Exclusion of the Mayor and Aldermen; Whether they can produce direct and clear Precedents before the Charter; and if not so, Whether their Proceedings and Claim tend not to the Dissolution of the Government of the City. As if, for the Purpose, the King should bring a *Quo Warranto* for this Power.

I ask, By what Title will you claim it? If by Charter, you fail, for that alone cannot uphold you; and what Instances can be given of Exclusion of the Mayor and Aldermen? And it must be also remembered, that when it shall come to Tryal, the Citizens shall not be of the Jury; nor no Tenant, nor Kinsman of any Freeman; but others of the adjacent Counties: And farther consider, how large the Danger is, in Case the City fail in Manner of their Title or Claim; for claiming amiss, they lose their Right, which they might enjoy, in case they made their Claim rightly, and in due Manner. *Forſan latet Anguis in herba*; viz. whilst this remains a Question, it cannot be but there will be Differences; the dangerous and ill Consequences of the Differences are latent, and cannot be well foreseen.

Sixthly, *London*, in Point of Liberties, exceeds all other Cities; First, in Power to make Laws for themselves; Secondly, in the Tryal of their Laws. For if it come in Question, what is the Custom, or Law customary in such or such a City or Seignior, the same shall not be tried by Certificate by any of themselves, but by a Jury at large: But if it fall to be an Issue, or Question, whether there be this or that Custom in *London*, it may not be tried by a Jury of the Citizens, or of others; but *Mayor and Aldermen*, by the Recorder of *London*, by Mouth certify, whether there be such a Custom as happens to be in Question, or no; and the Writ is directed to the *Mayor and Aldermen only*, to certify the Custom, and not to the City or Citizens. As if there should be Occasion for any one at Law, or in Equity, to defend himself by a Law or Ordinance made in *London*, he must alledge, that such Law was made by the *Mayor and Aldermen*, with Advice or Consent of the Common-Council, or by *them* otherwise, as the Case shall be: But he must also set forth the Custom of the City is, That the Mayor and Aldermen, by Consent, or otherwise, (as shall be) have Power to make such Laws, &c. and if Issue be joined on that Custom, the Mayor and Aldermen are to certify the Custom, one way or other. *Coke's Entries* 144. *Rassal* 144. This supposeth them faithful and knowing to certify; and this Certificate is binding to Parties Litigant, and to the City. This is to me a strong Argument, that though the Commons in Common-Council are necessary in Point of Advice, so as the Mayor and Aldermen cannot make any Law without such Advice; yet the Law is most properly said to be made by the Mayor and Aldermen, by Consent of the Council, as the ancient Form was.

Seventhly, As to the late Practice and Acts of that Time, it is too weak to support the Case; for every Custom must be Time out of Memory of all Men; and the Times were troublesome, when in the like, but far greater Case, the King's Negative Voice in making Laws was denied, though beyond all Memory, in all Cases and Times he had it; and therefore Precedents of this Kind of that Time are of little Value.

January 8. 75.

M A Y N A R D.

Upon consideration of the several Papers, which shew the usual Proceedings of the Common-Council of *London*, and likewise the Nature and Constitution of that Court, I conceive that the Mayor and Aldermen have a Negative Voice. Winnington.

First, Because the Forms and Instruments of By-laws and Orders prove that the Mayor and Aldermen are taken notice of, in a *distinct Capacity* from the Commonalty. *Secondly*,

Secondly, I find no Precedent, that ever the Commonalty made any By-law or Order without the Mayor and Aldermen, neither do they pretend to be a Court without them; which is a plain Reason, that they act in a different Capacity from the Common-Council-Men.

Thirdly, The Act made in the late Times, is a strong Argument to prove the Mayor and Aldermen had a Negative Voice; for if they had it not, what need was there of such an Act to take it away?

Fourthly, The general Rules that relate to the other Corporations, are not to be apply'd to the Corporation of *London*; for the Customs of *London* are many and great, and taken notice of in Law, in a more particular Manner than inferior Corporations are; and in this Case of the Court of Common-Council, the Lord *Coke* declares his Opinion in Print, That the Mayor and Aldermen are in a *different Capacity* from the Commonalty. So that in my Judgment, the Mayor and Aldermen have a Negative Voice in Matters propounded, and making of Laws and Orders, and admitting of Officers in Common-Council.

Nov. 17th, 1675.

FRAN. WINNINGTON.

Steele.

In answer to this Question, it may be considered: *First*, That all Acts of Parliament, and Letters Patents concerning Privileges, granted to *London*, have been by the Name, either of the City of *London*, the Citizens of *London*, the Mayor and Citizens, or of the Mayor, Commonalty, and Citizens of *London*, and their Successors; wherein have been included all Citizens and Freemen whatsoever of *London*, however distinguish'd by Offices, or otherwise.

Secondly, That the Power of making By-laws, is vested in every Corporation as such, as soon as they are created to be a Corporation, although no Mention be made, nor Power expressly given in their Charter, for the making By-laws; and therefore *London* being incorporated in the time of King *John*, and also having their Liberties confirmed by the great Charter, the Charter of 15 Ed. III. after giving Power to the Mayor and Aldermen, to make By-laws with the Assent of the Commonalty (especially having no Negative Expressions therein) did not introduce any new Power, nor abridge the former original Power to make By-laws, as being before vested in them; only seems to intimate more plainly, what was before included and intended; namely, A Presence of such at the Time and Place of ordaining such Constitutions.

Thirdly, That such a Negative Voice admitted, would vary from the Practice of other Corporations, and prove as inconsistent with all the Members of that Court convening in one Place, and consulting with one chief Person, and the same inferior Officers, who are indifferently to be serviceable and useful to the same, as one Court in a single, not double Capacity, representing the Citizens; as it would in the Practice beget Confusion and Disorder; in regard that if a Vote be carried by the Majority of the Commons, it must again be put to try the Majority of the Aldermen, (it not being to be supposed that they will always be of one Mind) and if they be, it cannot be known but by Vote or Scrutiny.

Fourthly, That besides the Uncertainty and various kinds of the Entries of the Stile of this Court, in their Acts of Common-Council, the Omission of mentioning of the Acts to pass by the Major Part of the Aldermen (unless we should suppose them always to concur) but still the mentioning the Act to pass by the Major Part of the Commons, is an Argument against the having and exercising of such a Negative Voice.

Fifthly, That as it is affirmed by more prevalent Arguments and Authorities, That the Lords and Commons in Parliament never sat together in one House, to make and consult of Laws, than by those produc'd that they did so fit together for such Purpose; so the Reason chiefly for their not sitting together, being that each might have a Negative Voice upon the other; viz. *ut aqua unicuique loquendi potestas fiat, alteri ab alteris disjuncti consulunt.* Polydore Virgil, *Lib. XI. p. 188.* begets a strong Argument (besides those aforementioned,) That whereas divers do consult and meet together, under one conjunct Power, and no Limitation or *Quorum* appointed, that there is in such Councils no Negative Voice, but the Majority of the Votes rules the Determination.

From all which I do conceive, that the Mayor and Aldermen have no Negative Voice in Matters propounded, and making of Laws and Orders, and admitting of Officers in Common-Council.

Chaplin Mayor.

Jovis xxi die Februarij 1677, Annoq; R. Regis
Carol' Secundi Angl. &c. xxxº.

It is ordered that the Opinions of Mr. Recorder, and Mr. Common Sergeant, now delivered into this Court in writing under their Hands, upon the Question touching the Lord Mayor and Aldermens Negative Voice in Common-Council, shall be here entered in the Repertory, the Tenor whereof is as followeth, viz.

The Question propounded to me is,

Whether the Lord Mayor and Aldermen of the City of London have a Negative Voice in making Laws and Ordinances in Common Council?

It seems to me that the Mayor and Aldermen have a Negative Voice.

Recorder.

For the more clear understanding of this Question, it is to be considered that

First, The Power of making Laws and Ordinances in Common Council, is grounded upon special Custom confirmed by Act of Parliament, and not upon that Power which every Corporation (as such) hath to make By Laws, which, appears very plainly by their making Ordinances, which cannot be justified by the Power of a Corporation to make By Laws, but have always been held good in Westminster-hall by virtue of their Custom confirmed by Parliament.

Secondly, Whenever London pleads a By Law, they plead their Power to make such By Custom.

Thirdly, The Election of Common-Council-Men is grounded upon Custom.

Fourthly, The making of Laws and Ordinances in Common-Council, and not in a Common Hall, is by Custom. The Lord Mayor and the Sheriffs, and divers of the considerable Officers of the City, are chosen at a Common Hall, and not in Common-Council.

These Elections are virtually the Act of the whole Corporation, and yet a great part of the Citizens have no Voice in that Court; for which no Reason can be assigned but Custom, there being nothing to be found in any Charter that warrants the same.

We must in the next place inquire what hath been the ancient usage.

To my Understanding it appears plainly, the Mayor and Aldermen have always had a Negative Voice.

First, There are many Precedents where the Mayor and Aldermen have refused Bills promoted by the Commons; some, where they have refused part, and the rest have passed into a Law; some, where they have taken time to advise.

Secondly, There is no Precedent of a Law made without the consent of the Mayor and Aldermen.

Thirdly, The constant pleading of the Custom of making By Laws, upon returns of Habeas Corpus and Certiorari, is quod Major & Aldermanni Civitat' præd' pro temp' existen' de assensu Communitat' ejusdem Civitat', &c.

Fourthly, The Opinion of the Lord Chief Justice Coke, (in his Book of Jurisdiction of Courts, Fol. 249.) is, in my Judgment, a very great Authority; he, speaking of the Court of Common-Council of London, saith, This Court hath some resemblance of the High Court of Parliament, for it consists of two Houses, viz. the one of the Mayor and Aldermen, and the other of such as be of the Common Assembly, resembling the whole Commonalty of London. In this Court they make Constitutions and Laws, &c. And these being made by the Mayor, Aldermen and Commonalty, do bind within this City and the Liberties thereof: they of the Common Assembly do give their Assent by holding up their Hands.

This being a Matter of Usage, he a Person of very great Experience, (and especially having been Recorder of London in a quiet serene Age) could not be ignorant of the usage.

C

Fifthly,

Fifthly, The Proceedings in the late Times of Trouble, seem to put the Matter out of Doubt, that before those Days the Usage was such as I have argued for.

4 Mar. 1641. The Commons bring into the Common Council a seditious Petition which was intended to be delivered to the Parliament, the *Locum tenens* and Aldermen take Time to advise, and the Petition was not then agreed.

17 Mar. That Petition was read in Common Council and agreed.

24 Jan. 1644. An Attempt was made against the negative Voice of the Mayor and Aldermen, and to call a Common Council without the Consent of the Lord Mayor. (I cannot find that ever this negative Voice was questioned before this Day.)

The Mayor and Aldermen at this Common Council, assert their negative Voice, which they affirm to have by Charrer, ancient Usage and Custom.

24 April 1645. A Committee appointed to accommodate that Affair, report their Opinion, That the Mayor and Aldermen, and Commons, should joyn in a Petition to the Parliament, and refer the Matter to them; and that in the Interim, Proceedings should be as they had been since the Mayoralty of *Pennington*.

28 Feb. 1648. An Act of Parliament (as 'twas called) passed to *indempnify* their past Proceedings, and to take away the negative Voice of the Mayor and Aldermen for the future.

17 Mar. 1648. From all which I conclude, that before *Pennington's* Mayoralty, the Mayor and Aldermen had a negative Voice in Common Council.

The Practice since that Time hath been otherwise: But I presume no Man will maintain that so late a Practice begun in Times of Trouble, can take away an ancient Right.

16 Feb. 77.

William Dolben, Recorder.

Common
Serj.

That I might give a plain and faithful Answer to the Question that hath been propounded to me, *viz.*

Whether the Mayor and Aldermen of the City of *London* have a negative Voice in Matters propounded, and making of Laws and Orders, and admitting of Officers in Common Council.

I have according to the best of my Understanding carefully perused and observed all the Precedents that I can meet with in any of the Books and Repertories of this City, from the first Time that I meet with any mention to be made of a Common Council; and observed the Usage and constant Practice of that Court, both as to the making of Laws and Election of Officers, eligible there; and do apprehend the Question propounded is of great Moment and Consequence to the Government and Peace of this City; and therefore I desire to give my Opinion in Writing, with the Reasons that induce me thereunto. I do conceive that this Court does consist of the Lord Mayor, Aldermen and Commoners; and that it is of absolute Necessity, that there be a Meeting and Concurrence of all three, to the making of any Law, or to the Election of any Officer, by that Court: For tho' I do not apprehend that there are two Courts, sitting in a Common Council, as some have thought; yet I do plainly conceive, that all the three Estates (as I may so call them) must be present, and consenting to every Act of that Court, that is obliging: And this will plainly appear to every unprejudiced Person, if we consider them apart.

First, It is agreed of all Hands, that at this Day, and at all Times (save only during the late unhappy Troubles) the Lord Mayor had and hath the Power to summon and to dissolve Common Councils at his Pleasure, which being premised, the Consequence will be this, that as his Presence is necessary to make the Court, so his Concurrence will be necessary to every obliging Act of that Court, for as he may declare his Dissent, by dissolving the Court, (which all Men agree) and so prevent the further proceeding of that Court, he may declare his Dissent more mildly, which will have the same Effects, to all Intents and Purposes; and if his Consent be not necessary, no more would his Presence be; for from the Ninth Year of *Edw. I.* to the First Year of *Rich. II.* which was before there was a Major, no Common Council was ever held but in the Presence of the *Custos*, and from *Richard II's* Time, (in whose Time *Fitz Allwyn* was first Lord Mayor, and came in the Place and Stead of the *Custos*)

never

never was there any Common Council summoned, or held (save in the late Troubles) but by the Appointment, and with the Consent of the Lord Mayor for the Time being, which will evidently appear by all the Precedents, of which I have perused above two hundred before the Time of *Hen. VIII.*

Secondly, That the Lord Mayor hath a Negative Voice, will appear by the Stile of most of those ancient By-Laws, where most commonly it is said, *Ordered by the Mayor, &c.* And if his Assent were not necessary, wherefore should it be declared? And surely it were preposterous for any Man to say that his Assent is necessary, and at the same time to affirm that he cannot *dissent*.

Thirdly, That the Lord Mayor hath a Negative, doth appear by the many Returns made by the City of *London* to the several Courts in *Westminster-Hall*, upon several Writs; which Returns do not only appear in the City Books, but even in our printed Law Books, to be done upon great Consideration, and by the Advice of several learned Sages of the Law; wherein they do affirm their Laws to be made by the Lord Mayor, &c. with the Consent of the Commons; and do support the Authority of making of Laws to be, that by the ancient Custom of *London*, the Lord Mayor, &c. have Power to make By-Laws, to Bind, &c. By which it does plainly appear, that if the Consent of the Lord Mayor had not been affirmed, the Law could not oblige, being not warranted by Custom, which is the great Support of all the By-Laws of this City, and gives them a greater Authority than the By-Laws of any other Corporation whatsoever.

Fourthly, The several Acts of Parliament that delegate any Authority to the Common Council, observe the same Stile and Direction, that the same be done by the Mayor, Aldermen and Commons in Common Council assembled; and every Act made by such Appointment, that does not pursue that Direction, will be void, and unjustifiable.

I do therefore conclude, that as the Common Council cannot be regularly assembled without the Lord Mayor, so all Acts of that Court, without his Consent, are void and illegal.

And as I do conceive that no Common Council can be summoned, or legally act, without the Direction and Consent of the Lord Mayor, so in the next place I am of Opinion, that it is also absolutely necessary that Aldermen be present to make that Court; and that without their Consent, no Act of that Court is binding.

First, There is no Act of Common Council now extant, but what is alleged to be made in the Presence, and by the Consent of the Aldermen, as well as it is of the Lord Mayor and Commons in Common Council. And though I do not find by the Precedents or Practices of ancient Time, that a certain Number of Aldermen were required to be present to constitute that Court, but sometimes there have been more, and sometimes fewer present; yet I never could find any Act, said to be the Act of that Court, without the Consent of the Aldermen; and if their Consent were not necessary, the declaring of them to be there would be vain and illusory; and if they must be there to create the Court, their Consent is essentially necessary to every Act of the Court; and the same Reason that gives them a Power to assent, gives them also to *dissent*, in natural Reason and Justice.

Secondly, As they are mentioned in the Stiles of all the ancient and modern Common Councils to be present, to create the Court, so are they mentioned to have given their Consent, in every Act of the Court; and sometimes Bills have been presented by the Common Serjeant, in the Name of the Commons, to the Lord Mayor and Aldermen, to which they have sometimes *agreed*, and at other times *rejected*, and sometimes *taken farther time to consider*, which shews their *Concurrence* necessary: And sometimes the Lord Mayor and Aldermen have sent Bills by the Recorder, to the Commons, for their Consent; without the Concurrence and Consent of all three, no Act can be binding.

Thirdly, I have perused the ancient Charter of the 15th of *Edw. III.* which was many Years after the Common Councils do appear to have been held in *London*, which does not create any Authority, but is a strong Evidence for, and is agreeable to the Practice of the times precedent, which says, *quod iidem*
Major

Major & Aldermanni & successores sui de assensu communitatis, &c. by which appears all their Consents were requisite to make a Law.

Fourthly, The Common Council is the only legislative Court of the City; but the Court of Lord-Mayor and Aldermen, and the other Courts of Record of this City can only put those Laws in Execution; and it would be strange to conceive that Governours should not have their Consent to those Laws, by which they are to govern, but that the governed should be the only Dictators, which is a thing that no other Court in *England* does pretend to.

Fifthly, All our Books of the Law that ratify the Customs for making of By-Laws in *London*, affirm their Concurrence necessary.

Sixthly, The Act made in the time of our late unhappy Troubles had never been thought necessary in case it might have been done without it.

Seventhly, The Lord-Mayor and Aldermen being the far lesser Number would be of no Consideration in that Court, in case their Consent were not necessary, the Commoners being so much the greater Number.

Eighthly, All the regular Committees that derive Authority from that Court, consist of Aldermen and Commoners; and the Lord-Mayor, by the Custom of this City, is of every Committee, and may be present, if he pleases: And no Report was ever thought to be regularly brought into the Common Council from any such Committee that had not the Concurrence of the greater Part of the Aldermen of the Committee; from all which Precedents, Practices, Reasons, and other the Premises, according to the best of my Understanding and Conscience, I do conceive the Mayor and Aldermen of the City of *London* have a Negative Voice in all Matters propounded, and making of Laws and Orders, and admitting of Officers in Common Council.

George Jeffreys, Com. Serjeant.

T H E E N D.